IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNY ALLISON and ZORAN HOCEVAR, individually and on behalf of a class of others similarly situated,	
Plaintiffs,	**2:08-cv-00467-JD**
v.	Judge Jan E. DuBois
THE GEO GROUP, INC, in its official and individual capacities, and JOHN DOES 1 – 100, in their official and individual capacities,	
Defendants.	

ORDER

NOW, this _____ day of _____, 2008, upon consideration of the Motion of Defendant The GEO Group, Inc. for Judgment on the Pleadings, and upon consideration of the briefs of the parties,

IT IS ORDERED that the motion is **GRANTED** and this action is **DISMISSED WITH PREJUDICE**.

BY THE COURT:

_____
JAN E. DUBOIS, J.

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Plaintiffs,	**2:08-cv-00467-JD**
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THE GEO GROUP, INC, in its official and individual capacities, and JOHN DOES 1 – 100, in their official and individual capacities,	*Electronically filed*
Defendants.	**Oral Argument Requested**

MOTION OF DEFENDANT THE GEO GROUP, INC.
FOR JUDGMENT ON THE PLEADINGS

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, Defendant The GEO Group, Inc. ("GEO") moves this Court for judgment on the pleadings. In support of this motion, GEO incorporates herein by reference its accompanying Memorandum of Law.

Respectfully submitted,

"s"/ Carolyn P. Short

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Dated: September 18, 2008

Attorneys for Defendant,
The GEO Group, Inc.

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MEMORANDUM OF LAW IN SUPPORT OF
THE MOTION OF DEFENDANT THE GEO GROUP, INC.
FOR JUDGMENT ON THE PLEADINGS

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Attorneys for Defendant,
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I. INTRODUCTION

Defendant, The GEO Group, Inc. ("GEO"), moves this Court to dismiss Plaintiff's Amended Complaint for failing to state any claims upon which relief may be granted for the reasons set forth in the recent Eleventh Circuit *en banc* decision of *Powell v. Barrett*, No. 05-16734, __ F.3d __, 2008 WL 4072800 (11th Cir. Sept. 4, 2008) (en banc).

Plaintiffs Penny Allison and Zoran Hocevar (collectively "Plaintiffs") in their Complaint allege that GEO had a "blanket" search policy, whereby all pre-trial detainees arriving at various jails across the country were strip searched without regard to the nature of the offense with which they were charged, and without any individualized suspicion that the detainee was secreting contraband. Many United States Circuit Courts have incorrectly interpreted the United States Supreme Court's decision in *Bell v. Wolfish*, finding that *Bell* requires a particularized showing of reasonable suspicion to justify any strip search of a detainee by a correctional officer.[1] Under this reasoning, a blanket policy of strip searching all arriving pre-trial detainees would be unconstitutional.

This individualized suspicion "rule" developed in the lower courts, however, directly contravenes the *Bell* Court's holding. In *Bell*, the Supreme Court upheld a "blanket" strip-search policy that did not require any individualized showing of reasonable suspicion. The analysis dictated by *Bell* focuses on the reasonableness of strip search policies in the correctional setting, not on the individual circumstances of each search. Under *Bell*, GEO's policy is constitutional.

[1] The Third Circuit has never ruled on the constitutionality of a blanket strip search policy for incoming pretrial detainees. District courts within the Third Cicuit have held that blanket strip search policies were unconstitutional. *See, e.g., Newkirk v. Sheers*, 834 F. Supp. 772, 778 (E.D. Pa. 1993).

Since *Bell*, other Supreme Court decisions set forth a less stringent standard than *Bell*, mandating that correctional policies affecting pretrial detainees' constitutionally protected interests may be upheld if found "reasonably related to a legitimate penological goal."

Plaintiffs' entire Complaint is wholly derived from the lower courts' incorrect interpretation of *Bell*. As the GEO policy is constitutional under the correct interpretation of *Bell*, as expressed in *Powell*, all of Plaintiffs' claims must be dismissed.

II. ALLEGATIONS OF PLAINTIFFS' COMPLAINT

A. Factual Allegations of the Named Plaintiffs.

1. Penny Allison

Plaintiff Allison ("Allison") contends that she was arrested for driving under the influence ("DUI") in November 2005. Amended Complaint ¶ 25. She contends that she was placed into Pennsylvania's Accelerated Rehabilitative Disposition program ("ARD"). Amended Complaint ¶ 25. Allison paid court costs in July 2006, but contends that she failed to appear for the required ARD hearing. Amended Complaint ¶ 25; Pa. R. Crim. P. 312, 313. The missed court hearing resulted in a bench warrant being issued for Allison's arrest. Amended Complaint ¶ 26.

During a traffic stop for expired registration by Springfield Township Police on July 25, 2006, Allison was arrested for the failure-to-appear outstanding bench warrant. Amended Complaint ¶ 26. Upon her arrest, she was ultimately brought to George W. Hill Correctional Facility in Delaware County ("GWH"). Amended Complaint ¶ 26. Alison was released approximately eight days later. Amended Complaint ¶ 28.

Allison further contends that she was later arrested again for another unrelated DUI, to which she pled guilty. Amended Complaint ¶ 29. She entered into a DUI weekend program at

GWH in November 2007, serving her conviction over approximately fifteen weekends. Amended Complaint ¶ 29.

2. Zoran Hocevar

Zoran Hocevar ("Hocevar") was arrested in March 2005 after a domestic dispute with his wife. Amended Complaint ¶ 32. In August 2007, he contends that all of his charges were dismissed except the charge for harassment. Amended Complaint ¶ 32. On June 26, 2006, a bench warrant was issued for his arrest after he failed to appear for a required court hearing. Amended Complaint ¶ 33. In July 2007, Hocevar was stopped "in his car" – apparently for a routine traffic violation – and was arrested pursuant to the outstanding bench warrant. Amended Complaint ¶ 34.

B. Allegations Regarding GEO's Strip Search Policy.

Plaintiffs contend that GEO has employed a "uniform practice and procedure of strip searching all pre-trial detainees who enter the Facilities, regardless of the crime or violation for which they are detained, and without making the legally required determination of whether reasonable suspicion exists to justify a strip search ('the Illegal Strip Search Practice or Policy')." Amended Complaint ("Am. Compl.") ¶ 1. Plaintiffs contend that the Fourth Amendment prohibits such strip searches, and that "reasonable suspicion to conduct a strip search can only emanate from the particular circumstances attendant to the search." Am. Compl. ¶¶ 20-21. Plaintiffs contend that GEO had a "company-wide" policy, practice or custom of "uniformly strip searching all individuals placed into the custody of the Facilities without any demonstration or finding of reasonable suspicion." Am. Compl. ¶¶ 22, 42.

Named Plaintiff Penny Allison contends that as a part of the intake process, she answered questions for about 30 minutes, and was then taken into another room by a female corrections

officer. Am. Compl. ¶ 27. She was instructed to remove all of her clothes, and squat and cough. Am. Compl. ¶ 27.[2] Hocevar alleges that he was "subject to a strip search" in a room with other men. Am. Compl. ¶ 34. The Amended Complaint provides no more detail on the manner of the strip searches.

III. ARGUMENT

A. Federal Rule Of Civil Procedure 12(c) Mandates Dismissal if Plaintiffs Cannot Succeed on Their Claims.

Rule 12(c) of the Federal Rules of Civil Procedure provides that "after the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." Fed. R. C. P. 12(c). This motion is timely since the pleadings are closed, and trial is not scheduled.

A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is treated under the identical standard for motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). *Stocktrans, Inc. v. Rostolder*, No. 07-1339, 2007 U.S. Dist. LEXIS 57323, at *7 (E.D. Pa. Aug. 7, 2007) (citing *Shelly v. Johns-Manville Corp.*, 798 F.2d 93, 97, n.4 (3d Cir. 1986); *Regalbuto v. City of Philadelphia*, 937 F. Supp. 374, 376 (E.D. Pa. 1995)). A 12(c) motion may be granted where the moving party establishes that no material issue of fact remains to be resolved, and that the movant is entitled to judgment as a matter of law. *Id.* at *7-8 (citing *Institute for Scientific Info., Inc. v. Gordon and Breach, Science Publishers, Inc.*, 931 F.2d 1002, 1005 (3d Cir. 1991)). The court must view the facts and inferences to be drawn from the

[2] Plaintiff Allison also alleges that she pled guilty to a later DUI, and served at least part of her sentence on the weekends at GWHCF. Am. Compl. ¶ 29. She contends that female weekender inmates are strip searched as a group, and that one time a male officer walked in during one of these strip searches. Am. Compl. ¶ 29-30. Plaintiffs do not, however, bring any Eighth Amendment claims in this case, and the factual allegations of these paragraphs are not relevant to this Motion.

pleadings in the light most favorable to the non-moving party. *Id.* at *8 (citing *Janney Montgomery Scott, Inc. v. Shepard Niles, Inc.*, 11 F.3d 399, 406 (3d Cir. 1993)).

B. The Supreme Court's *Bell v. Wolfish* Decision Approved Routine, Blanket Strip Searches For Pretrial Detainees, Regardless Of The Inmate's Charges And Without Any Particular Suspicion That The Detainees Were Harboring Contraband.

Many lower courts have misinterpreted the Supreme Court case of *Bell v. Wolfish* as "requiring … reasonable suspicion as a condition for detention facility strip searches, especially those that involve body cavity inspections." *Powell v. Barrett*, __ F.3d __, 2008 U.S. App. LEXIS 18907, at *21-22 (11th Cir. Sept. 4, 2008) (en banc). At least eight courts of appeals, relying on *Bell*, have disapproved "blanket," uniform strip search policies, holding that "in order to strip search such detainees, the arresting officers must have reasonable individualized suspicion that a detainee is carrying or concealing contraband." *Newkirk v. Sheers*, 834 F. Supp. 772, 778 (E.D. Pa. 1993) (relying on other circuit court cases discussing *Bell*).

As recently succinctly stated by the Eleventh Circuit, all of "[t]hose decisions misread *Bell*," and "the *Bell* decision, correctly read, is inconsistent with the conclusion that the Fourth Amendment requires reasonable suspicion before an inmate entering … a detention facility may be subjected to a strip search that includes a body cavity inspection." *Powell*, 2008 U.S. App. LEXIS at *23. Because *Bell* plays such a vital role in GEO's demonstration that its blanket strip search policy is constitutional, the case is summarized here in some detail.[3]

Bell was a putative class action filed on behalf of all persons detained in the Metropolitan Correctional Center ("MCC"), a federal detention facility located next to the United States

[3] As this is a 12(c) motion, the Court must assume that the facts stated in Plaintiffs' Complaint are true. Thus, GEO has so assumed for the purposes of this motion. Nothing in this motion or memorandum should be construed as admitting, in fact, that a blanket strip search policy or practice exists at any of the facilities involved in this suit; the facts are admitted for the purposes of this procedural context only.

Courthouse for the Southern District of New York. *United States of America ex rel. Louis Wolfish v. Levi*, 439 F. Supp. 114, 119 (S.D.N.Y. 1977) (note that when this case eventually reached the Supreme Court, it was captioned *Bell v. Wolfish*). Plaintiffs included all pre-trial detainees, as well as witnesses in protective custody, prisoners transferred to MCC for trial, persons incarcerated for contempt of court, and sentenced prisoners awaiting permanent prison assignment or serving terms at MCC. *Id.* The Plaintiffs challenged a wide array of prison conditions, among them the fact that strip searches of MCC inmates were routine following visits, contending that this violated their Fourth Amendment rights. *Id.* at 146.

Plaintiffs alleged that MCC searched every inmate upon returning to his or her quarters after a visit. During the visits, "the inmates and their visitors [we]re in full view [of guards] during the visits and fully clad. The secreting of objects in rectal or genital areas [would have been] an imposing challenge to nerves and agility." *Id.* at 147.

Nevertheless, all inmates, regardless of their charges (and even witnesses in protective custody who were not charged with any crime), were searched after every visit. "In the presence of a corrections officer, the male inmate must remove his clothes, display his armpits, open his mouth, raise his genitals, display the bottoms of his feet, and spread his buttocks for visual anal inspection. Female inmates must follow a similar procedure, including a visual vaginal inspection." *Id.* at 146. The district court ordered the prison officials to "cease the routine requirements of anal and genital inspections after visits," but "left [open] the possibility of visually inspecting anal or genital areas upon a specific and particular demonstration of probable cause for doing so." *Id.* at 148. The court held that there were other means of satisfying the MCC's security concerns, stating that "[i]n all the circumstances, the demands of security are amply satisfied if inmates [as a routine matter] are required to disrobe, to have their clothing

subjected to inspection, and to present open hands and arms to demonstrate the absence of concealed objects." *Id.*

Noting that the United States had "proved only one instance . . . in the several years of [MCC's] existence when contraband was found during a body cavity inspection," the Second Circuit Court of Appeals affirmed the district court's order halting the routine use of visual body cavity searches. *Wolfish v. Levi*, 573 F.3d 118, 131 (2nd Cir. 1978). Relying on Circuit precedent imposing a heightened "compelling necessity" standard to conditions of confinement imposed upon pretrial detainees, the Second Circuit found that this standard could not be satisfied by reference to the "fiscal necessity . . . [or] administrative convenience" of the correctional institution. *Id.* at 124.

The United States Supreme Court reversed, upholding the routine post-visit anal and genital inspections under both the Fourth Amendment and Fourteenth Amendment. The *Bell* Court assumed "for present purposes" that the Fourth Amendment applied to the strip searches, meaning that a "reasonableness test" governed. *Id.* at 558. This reasonableness test "requires a balancing of the need for the particular search against the invasion of personal rights that the search entails." *Id.* at 559. In applying the test, courts "must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted. *Id.*

The Court recognized the scope of the intrusion, finding the searches involved exposing body cavities for visual inspection, including lifting genitalia, spreading buttocks, and inspection of vaginal and anal cavities. *Id.* at 558 & n.39. It noted that the Second Circuit had found that the searches amounted to a "'gross violation of personal privacy.'" *Id.* at 558 (quoting *Levi*, 573 F.3d at 131). As for the manner, the Court "did not doubt" that the visual body cavity searches

had, on occasion, been conducted in an abusive manner, but found that the MCC general manner – absent abuse – was reasonable. *Id.* at 560; *see also Powell*, 2008 U.S. App. LEXIS 18907, at *18-21 (explaining the Supreme Court's analysis as justifying uniform visual body cavity inspections of pretrial detainees without cause or suspicion).

Nevertheless, and despite stating that the strip search practice "gives us the most pause," the Court found that the intrusiveness of the search was justified in light of the third and fourth factors – the justification for the searches and the place they were conducted. *Bell*, 441 U.S. at 558-59. Finding that "[a] detention facility is a unique place fraught with serious security dangers," the Court noted that the "[s]muggling of money, drugs, weapons and contraband is all to common an occurrence." *Id.* at 559. Such body cavity searches were necessary to discover and deter smuggling of weapons, drugs, and contraband. *Id.* at 558. That only one instance existed in the record where any strip search yielded contraband – an MCC inmate was found to be secreting a balloon of heroin in her vaginal cavity after a visit – "may be more a testament to the effectiveness of the search technique as a deterrent than to any lack of interest on the part of inmates to secrete and import such items." *Id.* at 559.[4]

Viewing the ultimate issue as "whether visual body-cavity inspections as conducted by the MCC rules can *ever* be conducted on less than probable cause," the court answered in the affirmative: "Balancing the significant and legitimate security interests of the institution against the privacy interests of the inmates, we conclude that they can." *Id.* at 560 (emphasis added). Thus, MCC could continue to conduct body cavity inspections on all inmates after each visit, without any cause to suspect contraband. *Id.* at 558.

[4] The Court rejected the district court's position that less intrusive alternatives existed (such as metal detectors), noting first that the existence of less intrusive alternatives was not a part of the applicable test, and second that the metal detectors would not address the problem of non-metallic contraband. *Id.* at 559 n.40.

Justice Powell took issue with the Court's holding that such searches could be conducted without any individualized showing of cause whatsoever, issuing a three-sentence dissent:

> I join in the opinion of the Court except the discussion and holding with respect to body-cavity searches. In view of the serious intrusion on one's privacy occasioned by such a search, I think at least some level of cause, such as a reasonable suspicion, should be required to justify the anal and genital searches described in this case. I therefore dissent on this issue.

441 U.S. at 563 (Powell, J., dissenting) (emphasis added); *see also Powell*, 2008 U.S. App. LEXIS 18907, at *25-27 (discussing Justice Powell's dissent). Thus, it is clear that Justice Powell understood that the *Bell* Court's majority had just authorized routine, uniform strip searches – without any showing of cause. Justice Marshall understood that too, as evidenced by his dissenting opinion, which stated that "[h]ere, the searches are employed absent any suspicion of wrongdoing," and disagreeing with the majority's decision to "uphold these indiscriminate searches." *Id.* at 578-78 (Marshall, J., dissenting) (emphasis added).[5]

Bell therefore establishes that the Fourth Amendment does not require an individualized showing of cause prior to application of a security-related strip-search policy in a correctional facility. Because Plaintiffs' entire theory of constitutional injury is wholly dependent upon such a Fourth Amendment requirement, Plaintiffs' strip-search claims must fail as a matter of law on their face.

[5] The *Powell en banc* court also noted that in the thirty years since *Bell*, the federal Bureau of Prisons continued to employ a blanket visual body cavity inspection policy for pretrial detainees, and no court had attempted to enjoin it. 2008 U.S. App. LEXIS 18907, at *27-30. The *Powell* court called on "[a]ll other courts" to recognize that *Bell* does not require reasonable suspicion to justify visual body cavity searches. *Id.* at *29.

C. An En Banc Eleventh Circuit Recently Applied *Bell* At The Motion to Dismiss Stage, Finding that *Bell* Compelled Dismissal Of A Fourth Amendment Claim Challenging A Blanket Strip Search Policy.

As a recent Eleventh Circuit *en banc* opinion clearly demonstrates, a uniform policy of strip searching all pretrial detainees as a part of the booking process does not offend the constitution, and claims alleging so are subject to dismissal at the Rule 12 stage. In *Powell*, eleven former pretrial detainees challenged a blanket strip search policy maintained by a county jail in Georgia. 2008 U.S. App. LEXIS 18907, at *2-3. Eight of those detainees were strip searched as a part of the intake process, and five of those eight were arrested on charges that would not provide reasonable suspicion for such a search. *Id.* at *3. The district court denied a motion to dismiss, finding that the Plaintiffs' allegations of a blanket strip search policy were sufficient to state a claim. *Id.* at *4. Defendants filed a petition for review under 28 U.S.C. § 1292(b), which the district court approved and the Eleventh Circuit accepted. Order (N.D. Ga. Aug. 15, 2005) (attached as Exhibit 1); Order (11th Cir. Dec. 8, 2005) (attached as Exhibit 2). The 3-judge Eleventh Circuit panel affirmed the district court's denial of the motion to dismiss. 496 F.3d 1288 (11th Cir. 2007). The entire Eleventh Circuit voted for rehearing en banc *sua sponte*, vacating the panel opinion. *Powell v. Barrett*, 05-16734-EE Docket at 11 (11th Cir.) (attached as Exhibit 3).

The *en banc* court reversed, finding that a policy or practice of strip searching all incoming pretrial detainees – without cause or suspicion – was constitutional under *Bell v. Wolfish*, requiring dismissal of plaintiffs' Fourth Amendment claims. 2008 U.S. App. LEXIS 18907, at *1. In reversing, the *en banc* court overruled its own precedent, finding that it was based on a misinterpretation of *Bell*. *Id.* at *6-7. After extensively reviewing the *Bell* decision's background and its language, the *en banc* panel came to the inescapable conclusion that *Bell*,

"correctly read, is inconsistent with the conclusion that the Fourth Amendment requires reasonable suspicion before an inmate entering or reeentering a detention facility may be subject to a strip search that includes a body cavity inspection." *Id.* at *23. In holding that the courts (including itself) had been misinterpreting *Bell*, the *Powell* court (1) relied on the fact that the *Bell* Court had "categorically upheld" a visual body cavity inspection policy under the Fourth Amendment, rejecting a case-by-case analysis, *id.* at *23-24; (2) found that Justice Powell's terse dissent would have been addressed by the majority if the dissent had incorrectly summarized the majority's holding, *id.* at *25-27; and (3) noted that the Bureau of Prisons still to this day maintains a blanket strip search policy, *id.* at *27-28.

The *Powell* court focused on *Bell*'s consideration of the third and fourth factors in the analysis – the justification for the searches and the place they were conducted. *Id.* at *19. Finding that "[t]hose two factors merged into one heavy consideration because the searches took place in a detention facility, and the justification for them was the critically important security needs of the facility," the Eleventh Circuit was convinced that *Bell* approved blanket strip search policies, provided they were no more intrusive than those in *Bell*. *Id.* at *1, *19.

In reaching its conclusion, the *en banc* court noted that "[t]he need for strip searches at all detention facilities, including county jails, is not exaggerated. Employees, visitors, and (not least of all) the detained inmates themselves face a real threat of violence, and administrators must be concerned on a daily basis with the smuggling of contraband by inmates accused of misdemeanors as well as those accused of felonies." *Id.* at *34. The court noted that county jails faced serious gang violence problems, and that where reasonable suspicion has been required, there are instances of contraband being smuggled into jails by those facing less serious charges. *Id.* at *35. Following the Supreme Court's mandate that "jailers and corrections officials 'should

be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain instructional security," the *Powell* court "recognize[d] *Bell* as authoritative precedent and reach[ed] the result it dictates in this case." *Id.* at *39.

D. Plaintiffs' Claims Should Be Dismissed, As They Are Wholly Based On The Same Misinterpretation Of *Bell* That Was Rejected In *Powell* By The *En Banc* Eleventh Circuit's Compelling Decision.

Here, Plaintiffs assert that they were subject to an "unconstitutional" blanket strip search policy, made unconstitutional by the sole fact that it was conducted without a reasonable suspicion that they were harboring contraband. Am. Compl. ¶¶ 21-22. Plaintiff Allison contends that she had to "squat and cough," and Plaintiff Hocevar alleges that he was "subject to a strip search." Am. Compl. ¶¶ 27, 34. At most, the searches here are no more intrusive than those in *Bell* – indeed, it appears the searches here may have been less intrusive. *Levi*, 439 F. Supp. at 146 (district court decision in *Bell*) ("In the presence of a corrections officer, the male inmate must remove his clothes, display his armpits, open his mouth, raise his genitals, display the bottoms of his feet, and spread his buttocks for visual anal inspection. Female inmates must follow a similar procedure, including a visual vaginal inspection."). Moreover, the searches here are conducted upon the pretrial detainees' initial entry into the facility, as opposed to the searches in *Bell* which were post-visit. Incoming inmates have not been under any supervision whatsoever, and obviously presents a greater security hazard than someone who has just come from an observed visit within the institution, as the MCC inmates in *Levi* had done. *Id.* at 146. The well-known dangers of all detention facilities, combined with due deference to correctional officials, dictate that a strip-search is a reasonable security measure upon placement of inmates in the general jail population. *Evans*, 407 F.3d at 1288-90.

Because Plaintiffs' claims are based upon the same fundamental misinterpretation of *Bell* as has pervaded the lower courts for years, they must be dismissed. The *en banc* Eleventh Circuit's compelling decision corrects the lower courts' repeated misinterpretation of *Bell*, and this Court should follow its lead.

E. Subsequent Supreme Court Decisions Make Clear That An Even More Deferential Standard Applies To Plaintiffs' Claims Here, Further Supporting Dismissal.

In *Bell*, the Supreme Court assumed, without deciding, that the Fourth Amendment applied to pretrial detainee claims based on correctional-setting strip searches. *Bell*, 441 U.S. at 558-60. Since *Bell*, however, the Court has decided that the Fourth Amendment does *not* apply in the correctional setting. *Hudson v. Palmer*, 468 U.S. 517, 527-28 (1984) ("A right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to ensure institutional security and internal order."); *Samson v. California*, 547 U.S. 843, 862 (2006) (Stevens, J., dissenting) (admitting that "*Hudson v. Palmer* does stand for the proposition that '[a] right of privacy in traditional Fourth Amendment terms' is denied individuals who are incarcerated"); *see also Johnson v. Phelan*, 69 F.3d 144, 146 (7th Cir. 1995) ("*Wolfish* assumed without deciding that prisoners retain some right of privacy under the fourth amendment. Five years later [in *Hudson*] the Court held that they do not.").

Because the Fourth Amendment does not apply, Plaintiffs' claims must be adjudicated under the general standard applicable to regulatory measures in correctional institutions, where the court asks whether the restriction or condition is "reasonably related to legitimate penological

interests." *Washington v. Harper*, 494 U.S. 210, 223 (1990);[6] *see also Turner v. Safley*, 482 U.S. 78, 89 (1987); *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 349 (1987). This test applies "even when the constitutional right claimed to have been infringed is fundamental, and the State under other circumstances would have been required to satisfy a more rigorous standard of review." *Harper*, 494 U.S. at 223.

Here, as the blanket strip search policy satisfies the more rigorous *Bell* test, it clearly also satisfies the less stringent test articulated in *Harper*. This precedent further supports dismissal of Plaintiffs' claims here.

IV. CONCLUSION

This Court should grant The GEO Group, Inc.'s Motion for Judgment on the Pleadings, dismiss Plaintiffs' claims as failing to state any claim upon which relief can be granted, and dismiss this action in its entirety with prejudice.

Respectfully Submitted,

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Dated: September 18, 2008

[6] The *Harper* test is functionally equivalent to the analysis applied by the *Bell* Court to the MCC plaintiffs' other non-strip-search claims. *See Bell*, 441 U.S. at 539 (holding that if a regulatory measure in a detention facility is "reasonably related to a legitimate governmental objective, it does not, without more, amount to 'punishment'" and must therefore be upheld).

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2008, I served the attached *Motion for Judgment on the Pleadings* on behalf of The GEO Group, Inc. on counsel listed below *via* the Court's Electronic Case Filing system:

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"s"/Shannon E. McClure___
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